

DISTRICT OFFICE: San Francisco District, Eureka Office, Project Manager: David Ammerman

FILE NUMBER: 2007-00825 Larry Anderson Property, Alleged Wetland Fill

PROJECT LOCATION INFORMATION:

State: California
County: Trinity
Center coordinates of site (latitude/longitude): 40.73946/-122.9425
Approximate size of area (parcel) reviewed, including uplands: 10 acres.
Name of nearest waterway: Ash Hollow Gulch
Name of watershed: Weaver Creek/Trinity River

JURISDICTIONAL DETERMINATION

Completed: Desktop determination ☒ Date: 26 October 2007
Site visit(s) ☒ Date(s): 17 October 2007 & 16 January 2003

Jurisdictional Determination (JD):

- ☐ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☐ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).
- ☒ Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:
- ☐ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area:
- ☒ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 1.25 acres.
- ☐ *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.
☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

- ☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

- ☐ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
- ☐ (2) The presence of interstate waters including interstate wetlands¹.
- ☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
- ☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ (4) Impoundments of waters otherwise defined as waters of the US.
- ☒ (5) The presence of a tributary to a water identified in (1) - (4) above.
- ☐ (6) The presence of territorial seas.
- ☒ (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:*

Ash Hollow Gulch, which flows through the Anderson Property and along the east side of Red Hill Road, is a second order tributary originating in U.S. Forest Service lands and may be an extension of Munger Gulch, a headwaters stream. At least four smaller headwater or spring-fed streams enter Ash Hollow, three on the east side and one on the west side. The one on the Westside appears to be intercepted by Anderson's pond impoundment built before 1996. The pond has regulated flow draining along the west side of the property. The eastside drainages enter perpendicular to Ash Hollow, some flow directly through culverts into a field south of Anderson's pond to form herbaceous wetland and willow swamp thickets with a total wetland acreage of 0.92 acres. These wetlands were

partially impacted in 2003 and totally gone including the willow thickets by 2007. Ash Hollow Gulch drains south into Sidney Gulch, which in turn goes under Highway 299, and Sidney Gulch continues south of Hwy 299 about a mile to Weaver Creek. Several smaller gulches also enter Sidney Gulch (McKinney Gulch, China Gulch, Ten Cent Gulch) but do not connect with Ash Hollow Gulch. These are all seasonal streams. Weaver Creek is a perennial stream, joined further south by East Weaver Creek. Weaver Creek drains about 5 to 6 miles south to enter the Trinity River, a perennial stream also regulated by Trinity Dam. The wetlands at Ash Hollow contain herbaceous plants such as *Carex feta* and *Juncus effuses* along with willow and alder trees at the south half of the property. All of this has been filled or cleared by Larry Anderson.

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

- ☒ Ordinary High Water Mark indicated by:
- ☒ clear, natural line impressed on the bank
 - ☐ the presence of litter and debris
 - ☒ changes in the character of soil
 - ☐ destruction of terrestrial vegetation
 - ☒ shelving
 - ☐ other:
- ☐ Mean High Water Mark indicated by:
- ☐ survey to available datum;
 - ☐ physical markings;
 - ☐ vegetation lines/changes in vegetation types.
- ☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
 - ☐ fine shell or debris deposits (foreshore)
 - ☐ physical markings/characteristics
 - ☐ tidal gages
 - ☐ other:

☒ Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:
David Ammerman, confirmed wetland map attached based on 2003 observations with follow up 2007.

Basis For Not Asserting Jurisdiction:

- ☐ The reviewed area consists entirely of uplands.
- ☐ Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- ☐ Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- ☐ The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
 - ☐ Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
 - ☐ Artificially irrigated areas, which would revert to upland if the irrigation ceased.
 - ☐ Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
 - ☐ Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
 - ☐ Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
 - ☐ Isolated, intrastate wetland with no nexus to interstate commerce.
 - ☐ Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
 - ☐ Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
 - ☐ Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant.
 - ☐ This office concurs with the delineation report, dated _____, prepared by (company):
 - ☐ This office does not concur with the delineation report, dated _____, prepared by (company):
- ☒ Data sheets prepared by the Corps.
- ☐ Corps' navigable waters' studies:
- ☐ U.S. Geological Survey Hydrologic Atlas:
- ☒ U.S. Geological Survey 7.5 Minute Topographic maps: Weaverville and Rush Creek Lakes
- ☐ U.S. Geological Survey 7.5 Minute Historic quadrangles:
- ☐ U.S. Geological Survey 15 Minute Historic quadrangles:
- ☒ USDA Natural Resources Conservation Service Soil Survey: Soil Survey of Trinity County, California, Weaverville Area, 1990
 - ☐ National wetlands inventory maps:
 - ☐ State/Local wetland inventory maps:
 - ☐ FEMA/FIRM maps (Map Name & Date):
 - ☐ 100-year Floodplain Elevation is: _____ (NGVD)
 - ☒ Aerial Photographs (Name & Date): Weaverville Basin Mapping Trinity County, Western Air Maps, Inc., 9-14-90; aerial provided via Peter Hedtko of Trinity County Department of Environmental Health, 2003 (Weaverville DOQQ: 040122f8nw.tif)

☒ Other photographs (Date): Color Ground photos taken 16 January 2003 (5 sheets of four photos each); One sheet of four photos submitted to Corps by CDFG game warden Aaron Adkins, 10-17-07; One sheet of four photos provided by Robert Sullivan of CDFG; and set of eight photos taken 10-17-07 by Corps.

☐ Advanced Identification Wetland maps:

☒ Site visit/determination conducted on: 10-17-07 & 1-16-03

☐ Applicable/supporting case law:

☐ Other information (please specify):

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.